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railway company may recover for injuries occasioned by an insecure appliance, whether such employee be engaged in intrastate commerce or not. We can see no good reason for this criticism, if it be conceded that the statute in question was within the constitutional powers of Congress, and that, of course, was long ago decided by the Supreme Court. If the railway company was under the law bound to install appliances of a certain character, any one injured by reason of its failure to do so was entitled to recover for those injuries, whether he was engaged in interstate commerce or not. In other words, the liability of the railway company does not flow from any right given to the employee because of his employment in interstate commerce, but upon a duty laid on the employer by reason of its engagement in interstate commerce.

Of course, the act in question, like so many other acts based on the commerce clause of the constitution, finds no real justification in that clause. The obvious intention of the makers of the Constitution was to prevent the States from establishing tariffs and other vexatious restrictions on the commerce of their neighbors. If they had been left at liberty to do this, there would have been endless trouble, leading, perhaps, to armed conflicts,—for disrupted trade has ever been the fertile mother of wars. Even worse would have been the condition of things when interior states, having no seaboard, were established, as was certain to be the case. The trade of Ohio, for instance, with her sister States could have been utterly cut off by Virginia and Pennsylvania imposing tariffs or transit dues on that trade. If any other construction had been given to the clause in the early days of the Republic, when the men who framed it were still alive, we imagine that it would have received short shrift. If, for instance, the Congress had attempted to prescribe the size of the wheels of wagons engaged in interstate commerce, or the number of oxen used in moving them, the act would have been laughed out of the courts. But when this sort of legislation was enacted nearly a century after the adoption of the Constitution, the commerce clause had developed in size like the Djin in the Bottle of the Arabian Nights, and the federal courts were able, without any qualms of conscience, to uphold the power of the government to prescribe the kind of vehicle in which interstate commerce should be carried on.—The National Corporation Reporter.

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**Labor—Equality in Labor Controversies.**—In *Bogni v. Perotti*, 112 N. E. 853, which was a controversy between rival labor organizations, whose members were seeking similar employment in the building trades, the facts are stated as follows in the opinion: "The plaintiffs are members of the General Laborers' Industrial Union No. 324, a voluntary unincorporated association, which is a branch of the national organization known as the Industrial Workers of the World.

The defendants are members of the Hod Carriers'. Building and Common Laborers' Union, Local 209, a like association, affiliated with a national organization known as the American Federation of Labor. The plaintiffs in their bill allege that there have been, are now, and will be numerous buildings under construction in Boston and its vicinity, in connection with which they have been, are now and will be engaged and ready to offer their services, in profitable, useful and pleasant employment, and that they all have no means of supporting themselves except through such employment; but the defendants, well aware of the plaintiffs' conditions in respect of such employment, have conspired to deprive the plaintiffs of their employment, have threatened that if they did not desert their own organization and cease to be members thereof and join the organization of the defendants, the latter would cause them to be discharged from their employment, and that the defendants have used unlawful pressure upon and have intimidated certain owners of property not to employ the plaintiffs by threats of sympathetic strikes and otherwise, and in some instances by these means have caused the discharge of the plaintiffs from employment."

The court held, that under general principles of the common law "the plaintiff's bill sets out a wrong against their rights committed by the defendants, for which ordinarily relief would be afforded in equity by injunction." The defendants, however, attempted to justify their conduct under the following statute of Massachusetts:

"An Act to make lawful certain agreements between employees and laborers, and to limit the issuing of injunctions in certain cases.

Section 1. It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the commonwealth or by any judge thereof in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application for which there is no adequate remedy at law; and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney.

Sec. 2. In construing this act, the right to enter the relation of employer and employee, to change that relation and to assume and create a new relation for employer and employee, and to perform and carry on business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed

to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employee or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted, but the parties shall be left to their remedy at law.

Sec. 3. No persons who are employed or seeking employment or other labor shall be indicted, prosecuted or tried in any court of the commonwealth for entering into any arrangement, agreement or combination between themselves as such employees or laborers, made with a view of lessening the number of hours of labor or increasing their wages or bettering their condition, or for any act done in pursuance thereof unless such act is in itself unlawful."

The statute is declared unconstitutional: (1) that labor is property and that the effect of the provision, assuming to ordain that the right to enter and perform employment is a personal and not a property right, is to declare that what was property is no longer entitled to the protection of property. Therefore the effectuation of such statute as a defense to the plaintiffs' prayer for relief would amount to confiscation of property by bare legislative fiat, that is to say, the taking of property without due process of law, (2) that the enforcement of this statute would deprive the plaintiffs of the equal protection of the laws. Upon this point the court said: "The statute provides in substance that the property right to labor of any individual or number of individuals associated together shall not be recognized in equity as property when assailed by a labor combination, unless irreparable damage is about to be committed, and that no relief by injunction shall be granted save in like cases for which there is no relief at law. That a man cannot resort to equity respecting his property right to work in the ordinary case simply because he is a laboring man, and that he cannot have the benefit of an injunction when such remedies are open freely to owners of other kinds of property, needs scarcely more than a statement to demonstrate that such man is not guarded in his property rights under the law to the same extent as others.

If a laborer must stand helpless in a court while others there receive protection respecting the same general subject which is denied to him, it cannot be said with a due regard to the meaning of constitutional guarantees that he is afforded 'the equal protection of the laws' within the Fourteenth Amendment to the Constitution of the United States and similar provisions of our own constitution. The right to make contracts to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset, as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners. Absolute equality before the law

is a fundamental principle of our own constitution. To the extent that the laborer is not given the same security to his property by the law that is granted to the landowner or capitalist, to that extent discrimination is exercised against him. It is an essential element of equal protection of the laws that each person shall possess the unhampered right to assert in the courts his rights, without discrimination, by the same processes against those who wrong him as are open to every other person. The courts must be open to all upon the same terms. No obstacles can be thrown in the way of some which are not interposed in the path of others. Recourse to the law by all alike without partiality or favor, for the vindication of rights and the redress of wrongs, is essential to equality before the law (citing cases).

Doubtless the Legislature may make many classifications in laws which regulate conduct and to some extent restrict freedom. So long as these have some rational connection with what may be thought to be the public health, safety of morals, or in a restricted sense, 'so as not to include everything that might be enacted on grounds of mere expediency,' the public welfare, they offend no constitutional provision (*Commonwealth v. Strauss*, 191 Mass. 545, 550, 78 N. E. 136, 11 L. R. A., N. S., 968, 6 Ann. Cas. 842). Weekly payment laws, employers' liability acts, workmen's compensation acts, inspection laws based on number of employees, and numerous statutes similar in principle have been upheld (citing cases). But all these and like statutes are quite different from one declaring that the laboring man either alone or in association with his fellows shall, as to his property right to work, be put on a footing of inferiority as compared with owners of other kinds of property when he appears in court respecting that property right. It is primary and fundamental in any correct conception of justice that the laboring man stands on a level equal with all others before the courts. Whatever may be his social or economic condition outside, when he enters the court the law can permit no rule to fetter him in the prosecution of his claims or the preservation of his rights which does not apply equally to all others respecting the same kinds of claims and rights."

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**Negligence—Gas—Death—Asphyxiation—Due Care of Decedent—**  
**Ashton v. Fall River Gas Works Co., 111 N. E. 415.**—The principal case was an action for death by asphyxiation, alleged to be due to defendant gas company's negligence in serving two tenements in a building from one meter. Plaintiff's evidence showed that decedent moved into one tenement, and while waiting to have the gas turned on the defendant turned on the gas for the other jointly served tenement, whereby, without decedent's knowledge, the gas was turned onto his tenement. The following morning decedent was found in a chair dead, with a gas fixture which he had unscrewed in his hands and